

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA) Bay City, Michigan
vs.) August 4, 2022
JUSTIN WILLIAM ZUBE,) 3:09 p.m.
Defendant.)
) Case No. 20-20491

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE THOMAS L. LUDINGTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: WILLIAM J. VAILLIENCOURT
ANN NEE
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PROCEEDINGS

(At 3:09 p.m., proceedings commenced.)

15:09:33 3 (Defendant present.)

15:09:47 4 **THE CLERK:** United States of America versus Justin
15:09:48 5 Zube, Case No. 20-20491.

15:09:52 6 **THE COURT:** Good afternoon, counsel. If we could
15:09:54 7 have -- if we could have your introductions, please.

15:09:55 8 MR. VAILLIENCOURT: Good afternoon, Your Honor. May
15:09:56 9 it please the Court, William Vailliencourt appearing on behalf
15:09:59 10 of the United States, and with me is Ann Nee, Assistant United
15:10:01 11 States Attorney also representing the United States.

15:10:04 12 | THE COURT: Good afternoon.

15:10:06 13 MR. RUPP: Good afternoon, Your Honor. Jeffrey Rupp
15:10:07 14 on behalf of Mr. Zube, who is present with me.

15:10:10 15 THE COURT: Good afternoon, Mr. Rupp. Good
15:10:11 16 afternoon Mr. Zube

15:10:13 17 | THE DEFENDANT: Yes sir

15:10:14 18 **THE COURT:** We are assembled for Mr. Zube's
15:10:16 19 sentencing hearing. Review of the gentleman's court records
15:10:20 20 reflect the fact that a jury convicted him April the 11th of
15:10:26 21 Count One of the first superceding indictment that charged him
15:10:30 22 with the offense of possession of and accessing with the intent
15:10:33 23 to view child pornography involving a prepubescent minor or
15:10:38 24 minor who had not attained the age of 12 years of age.

It is a Class C felony under federal law. It is

15:10:45 1 punishable by a minimum term of 10 years in custody and up to
15:10:49 2 20 years in custody. Following the term of custody, the Court
15:10:53 3 is obligated to impose a supervised release term of not fewer
15:10:57 4 than five years and up to lifetime supervised release. The
15:11:02 5 Court is also accorded by statute the authority to impose a
15:11:06 6 fine of up to \$250,000.

15:11:10 7 After the trial was completed, Mr. Zube was
15:11:16 8 ultimately interviewed by Probation Officer Teeples, who does
15:11:20 9 join us here this afternoon. Good afternoon, ma'am.

15:11:22 10 **MS. TEEPLES:** Good afternoon. Thank you.

15:11:25 11 **THE COURT:** She, in turn, prepared a presentence
15:11:27 12 investigation report in June and circulated it for review.

15:11:32 13 Mr. Rupp, have you had a chance to review the presentence
15:11:34 14 report and the opportunity to review it with Mr. Zube?

15:11:39 15 **MR. RUPP:** I have, Your Honor.

15:11:41 16 **THE COURT:** Any additions or corrections to the
15:11:45 17 report? I note that there were a number of -- indeed three
15:11:49 18 objections that were made. In response, I believe Ms. Teeples
15:11:54 19 was able to locate the original conviction papers that I
15:11:59 20 thought addressed the issues fairly squarely. Your floor.

15:12:03 21 **MR. RUPP:** Judge, I received Ms. Teeples' response
15:12:06 22 including the supporting paperwork. I don't have any further
15:12:10 23 support for our objection. In speaking with Mr. Zube this
15:12:14 24 afternoon, he informs me that he had been in communication
15:12:18 25 recently with the attorney who represented him on the case in

15:12:22 1 Isabella County, at least in part that we were challenging,
15:12:24 2 because it was his belief and understanding that they'd
15:12:29 3 fashioned a sentence that would not trigger additional points
15:12:31 4 being scored in his criminal history here.

15:12:34 5 He had anticipated getting some information from that
15:12:36 6 attorney, but then that line is disconnected. I should say the
15:12:43 7 communication did not continue, so I don't have any further
15:12:47 8 information to provide to the Court.

15:12:48 9 **THE COURT:** Okay. And do you know who the attorney
15:12:51 10 was?

15:12:54 11 **THE DEFENDANT:** It was Chuck Moses out of Isabella
15:12:55 12 County. He said he was going to mail me the paperwork, and I
15:12:59 13 haven't received it from him.

15:13:00 14 **THE COURT:** Okay. Well, without the paperwork, the
15:13:06 15 paperwork that we have supports the conclusion the probation
15:13:11 16 officer arrived at, correct?

15:13:13 17 **MR. RUPP:** It does, Your Honor.

15:13:20 18 **THE COURT:** And, accordingly, the presentence report
15:13:22 19 is accurate then, at least so far as we know today.

15:13:26 20 Were there any other additions or corrections, sir?

15:13:30 21 **MR. RUPP:** Judge, besides the ones that we had
15:13:32 22 discussed in chambers, which it's my understanding that there
15:13:35 23 will be a supplemental draft to include those changes regarding
15:13:39 24 his personal history as a juvenile as well as his abuse as a
15:13:44 25 younger individual and his medical history, one thing I did

15:13:50 1 neglect to mention while we were in chambers, but I do want to
15:13:54 2 put on the record, is with regard to paragraph 14 of the report
15:13:58 3 and similar lack is.

15:14:00 4 Referenced in paragraph 14 of the report it indicates
15:14:03 5 that when he was being investigated and interviewed by the
15:14:07 6 agent in this matter, that he admitted promoting quote unquote
15:14:11 7 young girls which he went on to specify were females under the
15:14:17 8 age of 18.

15:14:18 9 He denies making that statement or promoting anything
15:14:21 10 to do with girls that were under the age of 18; and, frankly,
15:14:26 11 my reading of the discovery materials is consistent with that,
15:14:30 12 that he fashioned himself as some kind of promoter but did not
15:14:33 13 give an indication that he was doing so for minors.

15:14:45 14 **THE COURT:** Do you know the source of that
15:14:47 15 information as you sit here? I recognize you're hearing about
15:14:50 16 it for the first time.

15:14:51 17 **MS. TEEPLES:** I would have to double check the
15:14:53 18 discovery to determine where I received that from.

15:15:00 19 **THE COURT:** And are you able, in a reasonably
15:15:03 20 efficient fashion, to be able to identify what you looked at in
15:15:07 21 order to come to the conclusion that the gentleman's
15:15:11 22 recommendation is accurate?

15:15:15 23 **MR. RUPP:** To provide you a copy of it, no. I did
15:15:17 24 not bring my full file, but I have a pretty clear recollection.
15:15:21 25 It's one of the case reports that after the agents initiated

15:15:30 1 the investigation, got their search warrant, seized his
15:15:31 2 devices, there was a fair bit of time between that and when he
15:15:35 3 was ultimately indicted and arrested.

15:15:39 4 During that time there were, I believe, multiple
15:15:42 5 occasions where my client either agreed or initiated a meeting
15:15:47 6 with the -- with the agent. I believe at least on one of the
15:15:51 7 occasions they met at a McDonald's restaurant, and during that
15:15:54 8 interview he had indicated a willingness to work with the
15:15:57 9 Government in order to better his station. And it was during
15:16:02 10 one of those interviews that he was describing to them what
15:16:06 11 he -- what kind of information or connections he could provide
15:16:09 12 to the Government based on his role or position as an
15:16:14 13 influencer or promoter.

15:16:17 14 **THE COURT:** Okay.

15:16:17 15 **MR. RUPP:** But, again, that he did not specify or say
15:16:20 16 that he did so with minors.

15:16:25 17 **THE COURT:** We'll set that one objection to the side
15:16:27 18 for a moment.

15:16:29 19 Mr. Zube, you've had a chance to read the report?

15:16:34 20 **THE DEFENDANT:** Me and Mr. Rupp went through it once,
15:16:36 21 yes.

15:16:36 22 **THE COURT:** And with the exception of the objections
15:16:41 23 that he's noted, is there anything else about the report that
15:16:44 24 appeared inaccurate or incomplete?

15:16:46 25 **THE DEFENDANT:** I had made a reference to Mr. Rupp

15:16:50 1 about the listing of prior criminal history of things I was not
15:16:55 2 convicted of, certain things that I may have had dismissed or
15:17:01 3 beaten by trial, which there was things included that I took to
15:17:04 4 jury trial and was found not guilty of that are included in the
15:17:08 5 report as my prior criminal history, things that --
15:17:13 6 **THE COURT:** Well, but not your -- not your prior
15:17:16 7 criminal history in the sense of convictions?
15:17:20 8 **THE DEFENDANT:** Right.
15:17:20 9 **THE COURT:** They're required to identify any set of
15:17:24 10 circumstances where a case has been initiated, even if they are
15:17:27 11 ultimately dismissed and ultimately dismissed, for example, by
15:17:31 12 a jury. They still need to be included.
15:17:33 13 **THE DEFENDANT:** Okay. May I make one clarification
15:17:36 14 on the Mr. Moses issue?
15:17:38 15 **THE COURT:** Yes.
15:17:39 16 **THE DEFENDANT:** He said he was going to send me
15:17:41 17 paperwork. I contacted him. After he -- when he represented
15:17:45 18 me, he had contacted Mr. Rupp and got clarification that under
15:17:49 19 60 days would not affect me, which is why Isabella gave me the
15:17:52 20 deal of 59 days.
15:17:54 21 And that was similar to the failure to register with
15:17:59 22 Mr. Case out of Bay County when Ms. Ellis was working for me.
15:18:02 23 She told me that it was under 60 days, it wouldn't affect my
15:18:05 24 sentence overall, and then that's why I told Mr. Moses when he
15:18:09 25 represented me and then he contacted Mr. Rupp. And he said

15:18:13 1 that him and the prosecutor of Isabella had clarification,
15:18:15 2 which is why we agreed on the deal. Otherwise, those two
15:18:20 3 charges I would not have taken.

15:18:25 4 **THE COURT:** I think you need to talk to those other
15:18:27 5 attorneys.

15:18:28 6 **THE DEFENDANT:** Well, they told me to get those two
15:18:31 7 misdemeanors out of the way, so it wouldn't affect, you know,
15:18:34 8 trial and whatnot, so I took the plea agreements under the
15:18:37 9 understanding that that certain amount of time wouldn't affect
15:18:40 10 my scoring and otherwise it wouldn't have been.

15:18:44 11 **THE COURT:** Okay. I appreciate your point.

15:18:48 12 Let's take a brief break. We'll see if we can locate
15:18:51 13 some of the paperwork substantiating the one issue, and then
15:18:56 14 we'll return to the courtroom in approximately 15 minutes.

15:19:01 15 **THE DEFENDANT:** Sir, the clarification for the --
15:19:04 16 that paperwork you're looking for, that was from the interview
15:19:07 17 with Mr. Smith, Agent Smith.

15:19:10 18 **THE COURT:** Okay. Thank you.

15:19:11 19 **THE DEFENDANT:** Yes.

15:19:14 20 **THE COURT:** Close our record for a short period of
15:19:16 21 time, and I'll see counsel in chambers, please.

15:19:19 22 (At 3:19 p.m., break taken.)

15:59:11 23 (At 3:59 p.m., break concluded.)

15:59:49 24 **THE COURT:** We are back in session. We had begun a
15:59:52 25 conversation with respect to a couple objections related to the

15:59:56 1 presentence investigation report. Counsel have reviewed a
16:00:00 2 number of the source documents and have otherwise been able to
16:00:05 3 try to advance a response.

16:00:09 4 Mr. Rupp, if you could identify the issue, and we'll
16:00:13 5 walk our way through each one of these, please.

16:00:16 6 **MR. RUPP:** Judge, I think just going numerically, the
16:00:19 7 first issue would be with regard to paragraph 14 of the report
16:00:22 8 where it indicates as written that Mr. Zube admitted to
16:00:26 9 promoting young girls and admitting further that those females
16:00:29 10 were under age 18 on Snapchat.

16:00:32 11 We were able to locate Agent Smith's handwritten
16:00:36 12 notes from that interview, and I believe the defense and the
16:00:39 13 Government agree that an appropriate rewriting of that
16:00:45 14 statement would be that Mr. Zube admitted promoting females on
16:00:51 15 Snapchat or other social media and that during that time he
16:00:54 16 would run across underage females, but ultimately the thrust is
16:01:00 17 that he did not promote underage females.

16:01:03 18 **THE COURT:** And the Government's agreeable to the
16:01:05 19 modification.

16:01:06 20 **MR. VAILLIENCOURT:** Yes, and just as a clarification,
16:01:08 21 it was Agent Engelby's notes that reflected that so, yes, we're
16:01:12 22 agreeable to modifying that sentence to essentially read that
16:01:16 23 Zube admitted promoting girls of legal age but came across
16:01:22 24 girls that were younger while promoting.

16:01:24 25 **THE COURT:** Thank you.

16:01:25 1 **MR. RUPP:** So and jumping forward, Judge, related
16:01:29 2 language found in paragraph 114.

16:01:31 3 **THE COURT:** 114.

16:01:34 4 **MR. RUPP:** About the fourth line down, as written,
16:01:36 5 the report reads, "Defendant's conduct is more egregious as he
16:01:40 6 admittedly promoting the minor females and their illicit images
16:01:44 7 to other perpetrators online." I believe the defense and
16:01:47 8 Government agree that in light of the agent's notes that we
16:01:50 9 would simply strike that line from the report.

16:01:54 10 **MR. VAILLIENCOURT:** That's correct.

16:01:57 11 **THE COURT:** Which I believe takes us to paragraph 48?

16:02:01 12 **MR. RUPP:** I think 44 is next, Judge. That's a 2009
16:02:08 13 conviction regarding sex offender registration. I believe it's
16:02:13 14 Mr. Zube's assertion that he was only sentenced to serve three
16:02:19 15 days on that matter and that the points assessed for it should
16:02:23 16 be lower. I'll let Mr. Vaillencourt respond.

16:02:28 17 **MR. VAILLIENCOURT:** Thank you. Yes, the Probation
16:02:29 18 Department obtained from the 74th District Court in Bay City a
16:02:35 19 printout of the case history, register of actions, which
16:02:39 20 reflected -- which reflects a conviction and a sentence on
16:02:44 21 May 13 of 2010 for 60 days in jail with credit for 60 days.
16:02:52 22 So the Court records confirm the accuracy of what's
16:02:56 23 reflected in paragraph 44.

16:02:58 24 **THE COURT:** Thank you.

16:03:02 25 **MR. RUPP:** Judge, I believe the next objection was

16:03:04 1 with regard to paragraph 48, a 2019 conviction for failing to
16:03:11 2 comply with sex offender registration. I believe that's the
16:03:14 3 one that Mr. Zube asserts was dismissed based on prosecutor
16:03:18 4 error.

16:03:22 5 **MR. VAILLIENCOURT:** And, again, Your Honor, the
16:03:24 6 Probation Department obtained similar documentation from the
16:03:26 7 74th District Court indicating that there was, in fact, a
16:03:31 8 conviction and a sentence on November 5th of 2020 of 14 days in
16:03:36 9 jail with credit for 14 days. So, again, the documentation
16:03:41 10 would support the recitation in paragraph 48.

16:03:47 11 **THE COURT:** A plea-based conviction, correct?

16:03:50 12 **MR. VAILLIENCOURT:** That's correct.

16:03:52 13 **THE COURT:** Which takes us to 49.

16:03:54 14 **MR. RUPP:** And, Judge, 49 is the 2021 conviction for
16:03:57 15 aggravated assault while Mr. Zube was an inmate at the Isabella
16:04:03 16 County jail. It's his assertion that he specifically entered
16:04:09 17 into an agreement that was -- and the sentence was imposed
16:04:12 18 pursuant to that agreement that would have been under the
16:04:15 19 60-day threshold in an effort to avoid scoring additional
16:04:20 20 points in this calculation.

16:04:24 21 **MR. VAILLIENCOURT:** And, again, Your Honor, the
16:04:25 22 Probation Department obtained a copy of the judgment of
16:04:28 23 sentence from the 76th -- 76th District Court in Isabella
16:04:33 24 County reflecting that the defendant was convicted by a plea of
16:04:39 25 the charge of aggravated assault, which is a one-year

16:04:42 1 misdemeanor, and was sentenced to serve 101 days in jail with
16:04:47 2 credit for the 101 days.

16:04:51 3 So, again, the score -- or the summary as outlined in
16:04:55 4 paragraph 49 of the presentence report conforms to those
16:05:00 5 documents from the District Court.

16:05:02 6 **THE COURT:** Okay. Separately, the presentence
16:05:05 7 investigation report had an advisory line scoring. It
16:05:11 8 reflected a base offense level of 18, two-level increase as a
16:05:16 9 result of the -- a number of the images including prepubescent
16:05:20 10 minors, a four-level increase as a result of a number of the
16:05:25 11 images containing sadistic or masochistic conduct, a two-level
16:05:33 12 increase for the use of a computer, a four-level increase as a
16:05:36 13 result of there being a great -- more than 300 images but less
16:05:40 14 than 600.

16:05:43 15 His resulting offense level score was 30. Fourteen
16:05:47 16 level -- excuse me, 14 criminal history points placing him in
16:05:51 17 Category VI. As a result, the advisory guideline range was for
16:05:57 18 168 months to 210 months.

16:06:01 19 Any challenges to the scoring, sir?

16:06:04 20 **MR. RUPP:** Judge, besides those that have already
16:06:06 21 been placed on the record, I don't have any additional comment
16:06:09 22 with regard to the scoring. It does appear to be consistent
16:06:12 23 with the jury's verdict.

16:06:14 24 **THE COURT:** Any challenges to the scoring or to the
16:06:18 25 report from the Government?

16:06:20 1 **MR. VAILLIENCOURT:** No, Your Honor.

16:06:22 2 **THE COURT:** I would note I have had a chance to

16:06:24 3 review your sentencing memorandum, Mr. Rupp. We would

16:06:28 4 entertain any remarks that you would like to make in allocution

16:06:32 5 on behalf of the defendant.

16:06:34 6 **MR. RUPP:** Judge, I'll be brief because I think the

16:06:38 7 written submission really covers my take on this. I'd just

16:06:41 8 reiterate that it has been a struggle, the relationship between

16:06:46 9 Mr. Zube and I, as we've gone through this prosecution, and

16:06:50 10 it's unfortunate some of the things that I learned about him

16:06:53 11 and his past didn't come out until we were in the presentence

16:06:57 12 investigation phase.

16:07:01 13 All too much time of our -- all too much of our time

16:07:05 14 spent preparing and then litigating this I think was misplaced,

16:07:09 15 and I think now that having a clearer picture of his past, as

16:07:15 16 well as some of his mental health issues -- not that they

16:07:18 17 excuse the behavior -- help explain it and also explain the

16:07:24 18 difficulty that we experienced in our relationship.

16:07:28 19 You know, hindsight's 20/20. I don't know that it

16:07:33 20 would have affected any change, but I certainly, as his

16:07:35 21 counsel, would have approached him differently, and to the

16:07:37 22 extent that I fell short in learning those things about him, I

16:07:41 23 apologize to him.

16:07:43 24 But with all of that, Judge, and with the lengthy

16:07:48 25 history that's contained in this report, I would suggest that a

16:07:51 1 sentence at the bottom end of the guidelines is sufficient to
16:07:55 2 meet the statutory concerns and considerations without being
16:07:59 3 excessive and that for Mr. Zube's benefit there should be a
16:08:03 4 strong emphasis during his time in custody and afterwards on
16:08:08 5 appropriate counseling for his own benefit.

16:08:12 6 **THE COURT:** Thank you, sir. I appreciate your
16:08:13 7 remarks.

16:08:15 8 Mr. Zube, anything that you would add to Mr. Rupp's
16:08:19 9 remarks on your behalf?

16:08:20 10 **THE DEFENDANT:** I do agree that maybe some of our
16:08:30 11 interactions didn't benefit either us or the Court's time, and
16:08:35 12 there were some things that could been done differently.

16:08:43 13 I'm not exactly sure what -- there are some things I
16:08:46 14 wanted to bring up, but I don't know if this is the appropriate
16:08:49 15 time, I can -- if Mr. Rupp will inform me when that is.

16:08:54 16 **THE COURT:** Do they relate to sentencing?

16:08:56 17 **THE DEFENDANT:** Okay. There were some other points
16:08:57 18 that were not -- things that were not put on the record, and I
16:09:00 19 just wanted to make sure that -- my understanding is they need
16:09:04 20 to be said so that they can be brought up in an appeal. If
16:09:08 21 that's the case, partially the ineffective assistance would
16:09:13 22 definitely be one of them.

16:09:16 23 **THE COURT:** Which is often addressed on
16:09:19 24 post-conviction motions, sir.

16:09:22 25 **THE DEFENDANT:** Right. And any of those things that

16:09:23 1 would still be allowed to bring up, I would have no problem
16:09:26 2 doing that later. I just -- my understanding was I had to tell
16:09:29 3 you about certain things so that they were secured for later.
16:09:31 4 If that's not the case, then I can talk about all them with the
16:09:37 5 appeal attorney.

16:09:38 6 **THE COURT:** That particular subject that you had
16:09:39 7 referred to is often addressed as a post-conviction matter.

16:09:45 8 **THE DEFENDANT:** Okay. Then one other thing that I'm
16:09:48 9 sure you'll remember, prior to trial I tried to raise some
16:09:51 10 things. You told me to go through Mr. Rupp. I do believe I
16:09:54 11 should have been able to put in for a Frank's hearing as there
16:09:58 12 is certain proofs of at least three things that were either
16:10:04 13 direct lies or omissions in the affidavit for the search
16:10:06 14 warrant, and I believe that needs to be addressed later, too.

16:10:11 15 **THE COURT:** Okay. Anything else that you think
16:10:15 16 should be addressed in terms of your sentence, sir?

16:10:16 17 **THE DEFENDANT:** No, sir.

16:10:20 18 **THE COURT:** All right. I appreciate your remarks.

16:10:21 19 Thank you.

16:10:22 20 Government?

16:10:28 21 **MR. VAILLIENCOURT:** Well, Your Honor, three victims
16:10:29 22 have been identified in the presentence report as individuals
16:10:35 23 who were in the images possessed by Mr. Zube. They're not
16:10:39 24 present, but they did submit impact statements for the Court to
16:10:43 25 review.

16:10:44 1 The Court has heard all the testimony at trial and
16:10:47 2 had the unfortunate duty of seeing those images. The jury also
16:10:52 3 suffered the trauma of seeing those images and it was only a
16:10:56 4 small sampling of what the defendant actually possessed. But
16:10:59 5 the reaction of some of the jurors I think demonstrates the
16:11:03 6 revulsion that the defendant's conduct causes. Many turned
16:11:07 7 away in disgust; others cried.

16:11:12 8 It says nothing about the impact about the possession
16:11:14 9 of child pornography that it has on the victims. Young kids in
16:11:18 10 this case, whose abuse and molestation is preserved and
16:11:25 11 distributed for those like the defendant to view for their own
16:11:29 12 enjoyment. The impact on those kids is described in their
16:11:32 13 statements, and one of them was four years old at the time,
16:11:34 14 another was between five and 11, so defendant's conduct does
16:11:39 15 have an impact on real people.

16:11:42 16 As far as what to do with the defendant, Your Honor,
16:11:44 17 the defendant would be subjected to an enhanced maximum
16:11:48 18 sentence of 20 years if he had either images of children under
16:11:52 19 age 12 or a prior conviction related to the possession of child
16:11:57 20 pornography. In this case, the defendant has both, so I
16:12:03 21 believe that makes him unique, and that suggests that a
16:12:07 22 sentence toward the top of the guidelines is actually a more
16:12:10 23 appropriate sentence for this defendant.

16:12:12 24 We're also asking the Court to order restitution to
16:12:15 25 the victims in the amounts that they requested. We're also

16:12:19 1 asking the Court to order the forfeiture of the requested
16:12:23 2 items. There was a preliminary order of forfeiture that has
16:12:28 3 been entered. We're asking the Court to put the forfeiture
16:12:31 4 portion of the defendant's sentence on the record, and we ask
16:12:35 5 that the forfeiture language be included in the defendant's
16:12:38 6 judgment. We have provided to the Court's case manager, the
16:12:43 7 probation officer and defense counsel the proposed language, so
16:12:47 8 we'd ask the Court to do all that in imposing an appropriate
16:12:50 9 sentence in this case.

16:12:52 10 **THE COURT:** Thank you, sir.

16:12:53 11 **MR. VAILLIENCOURT:** Thank you.

16:12:53 12 **THE COURT:** I want to clarify one point particularly
16:12:57 13 with you Mr. Vaillencourt and Ms. Teebles. My original
16:13:01 14 recommendation addresses a -- recommends a single assessment
16:13:07 15 under the Justice for Victims of Trafficking Act of 5,000. Is
16:13:13 16 there updated information concerning the number of victims and
16:13:18 17 the quantification of the amount?

16:13:21 18 **MR. VAILLIENCOURT:** No, Your Honor. The only victims
16:13:22 19 that we have identified were the three victims that are
16:13:26 20 specified in the presentence report.

16:13:28 21 **THE COURT:** As the basis for that recommendation,
16:13:31 22 okay.

16:13:40 23 There really is no one in the courtroom that has
16:13:46 24 had -- has a better understanding for what the potential
16:13:49 25 consequence was of the behavior that Mr. Zube engaged here.

16:13:53 1 The gentleman over the course of 34 years has accumulated 14
16:13:58 2 criminal history points. He understands the criminal justice
16:14:01 3 system, and he understands the prohibitions of law. He
16:14:05 4 understood the gravity of his involvement in the -- with child
16:14:12 5 pornography as well as the fact that those images will remain
16:14:17 6 in perpetuity to continue hurting the victims in many of those
16:14:26 7 images.

16:14:27 8 It was a difficult case to try. It was, as pointed
16:14:31 9 out, a very difficult case for the jury. They did their job.
16:14:35 10 Nevertheless, the offense is of significant gravity and as is
16:14:43 11 the sentence to be imposed.

16:14:45 12 I would, however, on the other hand, credit a number
16:14:49 13 of points that I thought Mr. Rupp made in allocution, and that
16:14:55 14 is the fact that we learned more about Mr. Zube, his personal
16:14:59 15 history, some of his personal challenges, during the course of
16:15:04 16 his 34 years.

16:15:09 17 There -- it was, in many respects, not easy growing
16:15:12 18 up. He faced difficult challenges during that period of time
16:15:19 19 that made it difficult for him to maintain his complete
16:15:23 20 attention to his behavior, and we will, as a result of that,
16:15:27 21 make recommendations to the Bureau of Prisons to hopefully
16:15:31 22 provide him support.

16:15:34 23 I would note that he does have the support of his
16:15:40 24 father. He's been here during the course of the trial, as well
16:15:45 25 as each of the hearings. You are lucky in that respect,

16:15:50 1 Mr. Zube, to continue to have the support of your dad.

16:15:56 2 We have reviewed the Sentencing Reform Act. I've

16:15:57 3 briefly highlighted a number of the 3553(a) factors important

16:16:02 4 to the Court's assessment. We would hereby commit the

16:16:07 5 gentleman to the custody of the United States Bureau of Prisons

16:16:08 6 for a term of 180 months.

16:16:11 7 Upon his release from custody, he is to be placed on

16:16:13 8 supervised release for a term of five years. He's ordered to

16:16:17 9 pay the statutory assessment of \$100. He is also ordered to

16:16:21 10 pay the Justice for Victims of Trafficking Act assessment of

16:16:26 11 \$5,000. That's due presently. Drug testing is ordered as is

16:16:31 12 required by statute.

16:16:33 13 Mr. Zube is also to cooperate with the collection of

16:16:36 14 a DNA sample as directed by his probation officer. While he's

16:16:41 15 on supervised release he is to abide by the standard conditions

16:16:45 16 of supervised release that have been adopted by the United

16:16:48 17 States District Court for the Eastern District of Michigan.

16:16:51 18 He's also to comply with the following additional special

16:16:54 19 conditions:

16:16:55 20 He is to comply with the requirements of the Sex

16:16:57 21 Offender Registration and Notification Act. He is to

16:17:02 22 successfully complete any sex offender diagnostic evaluation,

16:17:04 23 treatment or counseling program as directed by his probation

16:17:08 24 officer. Reports pertaining to the assessments and treatment

16:17:12 25 will be provided to his probation officer. He is also to

16:17:16 1 contribute financially to the expense of same to the extent of
16:17:21 2 his ability as determined by his probation officer.

16:17:23 3 He is not to have direct contact with any child that
16:17:26 4 he knows or has reason to know is under the age of 18,
16:17:30 5 including his own children, without the permission of his
16:17:33 6 probation officer. If he does have direct contact with any
16:17:37 7 child that would fall into such category, including his own
16:17:41 8 children, without the permission of his probation officer, he
16:17:44 9 is to report it within 24 hours of the occasion.

16:17:48 10 He is to participate in a computer internet
16:17:50 11 monitoring program administered by the United States Probation
16:17:53 12 Department. He must abide by the computer internet monitoring
16:17:58 13 program participation agreement that is in effect at the time
16:18:00 14 of supervision and comply with any amendments to the program
16:18:04 15 during the term of supervision.

16:18:06 16 He is to submit his person, residence, office,
16:18:09 17 vehicle, paper, business -- papers, business or place of
16:18:13 18 employment and any property that is under his control to a
16:18:17 19 search. The search is to be conducted by a United States
16:18:20 20 probation officer at a reasonable time, in a reasonable manner,
16:18:24 21 based upon a reasonable suspicion of contraband or evidence of
16:18:27 22 a violation of a condition of release.

16:18:30 23 His failure to submit to the search may constitute
16:18:33 24 independent grounds for revocation of his terms of supervised
16:18:36 25 release. His failure to submit -- excuse me -- he is also to

16:18:41 1 warn anyone that he is residing with that he's amenable to a
16:18:44 2 search on those terms.

16:18:45 3 He is to notify anyone he may be dating or intending
16:18:50 4 to marry with a minor child under the age of 18 of the fact of
16:18:53 5 his conviction. He is not to purchase, sell, view or possess
16:18:56 6 images in any form of media or live venue that depict
16:19:02 7 pornography, sexually explicit conduct, child erotica or child
16:19:07 8 nudity. He is not to patronize any place where such material
16:19:11 9 is available.

16:19:11 10 He is also to have all of his residences preapproved
16:19:14 11 by the Probation Department. He must not provide care or live
16:19:17 12 in a residence where children under the age of 18 or adults
16:19:21 13 with disabilities also reside without prior approval of his
16:19:25 14 probation officer.

16:19:27 15 He is to submit to periodic polygraph testing at the
16:19:32 16 direction of his probation officer as a means to insure
16:19:35 17 compliance with the requirements of supervision or treatment.

16:19:39 18 No violation proceedings will arise solely on the basis of the
16:19:40 19 polygraph examination. Again, he's also to contribute
16:19:47 20 financially to the expense of the polygraph examinations to the
16:19:50 21 extent of his financial capability as determined by his
16:19:54 22 probation officer.

16:19:55 23 Finally, he is to participate in a mental health
16:19:58 24 treatment program and follow the rules and regulations of that
16:20:01 25 program. His probation officer, in consultation with the

16:20:05 1 treatment provider, will supervise -- will supervise his
16:20:10 2 participation in the program.

16:20:14 3 There were also forfeiture provisions identifying a
16:20:20 4 number of the electronic information obtained from Mr. Zube. I
16:20:27 5 believe that's been reduced to judgment. Am I correct in my
16:20:31 6 understanding?

16:20:33 7 **MR. VAILLIENCOURT:** Well, I know that a preliminary
16:20:34 8 order was entered. I'm not sure that I've seen an actual
16:20:39 9 judgment entered, a final judgment.

16:20:41 10 **THE COURT:** We'll include the reference in the
16:20:44 11 judgment of sentence to the forfeiture judgment.

16:20:48 12 **MR. VAILLIENCOURT:** Thank you.

16:20:49 13 **THE COURT:** Any questions concerning the sentence or
16:20:53 14 objections that we've not given earlier attention to, Mr. Rupp?

16:20:58 15 **MR. RUPP:** Not that I'm aware of, Judge.

16:21:00 16 **MR. VAILLIENCOURT:** Yes. There were three victims in
16:21:02 17 this case that made restitution requests. Pia, who is in the
16:21:08 18 "Sweet Sugar" series, requested \$5,000 restitution.

16:21:13 19 Sarah from "Marineland1" series requested \$10,000.

16:21:18 20 And then the individual in the "Aprilblonde" series
16:21:22 21 requested restitution of anywhere between 3,000 and \$20,000 in
16:21:27 22 restitution.

16:21:28 23 I believe those figures would be appropriate. Under
16:21:31 24 the statute, the Court's required to order at least \$3,000. As
16:21:37 25 I've indicated, one's requested between 3 and 20; Pia requested

16:21:41 1 5,000; and Sarah requested 10,000. We would ask the Court to
16:21:45 2 order restitution in those amounts.

16:21:50 3 **THE COURT:** You're kind of closing a loop on a
16:21:52 4 question I had earlier. Because those have been made through
16:22:00 5 your office, but I have not actually seen any of those myself.
16:22:03 6 There's reference to them in the context of the report, but
16:22:08 7 before I make a finding, I think I need to at least read the
16:22:11 8 materials and understand the basis for the request.

16:22:15 9 **MR. VAILLIENCOURT:** All the documentation was
16:22:17 10 provided to probation, you know, with all the support, and it
16:22:20 11 was also provided to counsel, and they were -- they were
16:22:25 12 included in the report, so -- but if the Court wants, I mean,
16:22:28 13 we'll have probation get you those additional documentation.
16:22:31 14 We just ask that those amounts be ordered and included in the
16:22:35 15 judgment.

16:22:38 16 **THE COURT:** And to the extent that that information
16:22:40 17 is now available, we also have 90 days under statute in order
16:22:45 18 to make a determination on the restitution requests. Because
16:22:49 19 that's been identified, I'll look at the source documentation
16:22:53 20 that's available and reach a conclusion on the restitution
16:22:56 21 amounts.

16:22:56 22 **MR. VAILLIENCOURT:** Thank you, Your Honor.

16:22:57 23 **THE COURT:** Any additional business,
16:22:58 24 Mr. VaillienCourt, from the Government's perspective?

16:23:01 25 **MR. VAILLIENCOURT:** No, Your Honor.

16:23:02 1 **THE COURT:** One thing I want to be sure that Mr. Zube
16:23:04 2 knows is that he's entitled to seek an appeal and a review of
16:23:10 3 the decisions that have been made during the course of his
16:23:13 4 experience hear with the trial court. Nevertheless, in order
16:23:18 5 for that to be timely, he'll have to have the claim of appeal
16:23:20 6 filed with the clerk of court within 14 days.

16:23:23 7 Mr. Rupp, have you had a chance to talk with Mr. Zube
16:23:26 8 concerning that subject?

MR. RUPP: Repeatedly and at length.

16:23:29 10 **THE COURT:** Okay. Good luck, Mr. Zube.

16:23:32 11 Record's closed.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the proceedings in the above-entitled matter.

Carol M. Harrison

Date: 11-14-2022

Carol M. Harrison, RMR, FCRR
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